IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2588 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MANUBHAI M PARMAR

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 2588 of 1988
MR KS JHAVERI for Petitioner No. 1
Mr.R.C.Kodekar, Addl. GOVERNMENT PLEADER
for Respondents.

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CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 06/10/2001

C.A.V.JUDGEMENT

1. The petitioner has challenged the charge sheet dated 11-8-1987 which is at Annexure-'D' and the inquiry dated 12-4-1988 which is at Annexure-'F', on the ground that the petitioner has retired from the service as way back on 31-3-1985 and that after about three years of his retirement, he has been served with the aforesaid charge

sheet.

2. It is the case of the petitioner that when he was working as a Mamlatdar, Agricultural Lands Tribunal under sec.67 of the Bombay Tenancy & Agricultural Lands Act, 1948, he disposed of Applications bearing no.2829/82, 2830/82 and 2831/82 vide order dated 25-8-1983. The copies of the aforesaid orders are on record at Annexure-'A'. The aforesaid orders were also carried to the Deputy Collector (Prant Officer), Gandhinagar under sec.76 of the Bombay Tenancy & Agricultural Lands Act being Revision Application Nos.246/84, 247/84 and 248/84. The said Deputy Collector (i.e. Prant Officer) also confirmed the orders passed by the present petitioner, vide order dated 4-5-1985. The said orders are on record at Annexure-'C'.

3. After receipt of the charge sheet, the petitioner filed reply dated 28-9-1987 and stated that the inquiry is bad under the BCSR Rules - particularly Rule-189A, inquiry is contemplated only against those employees who have caused pecuniary loss to the Government and are found guilty of misconduct or negligence during the period of their service. It is the say of the petitioner that the alleged event took place in the year 1983 and the inquiry initiated in the year 1988. Under the circumstances also, the letter informing him to hold inquiry is bad in law. It is stated by the petitioner that while passing the orders he has worked as Quasi-Judicial Officer as per the judgment of this Court in N.P. Shaikh v/s. State of Gujarat in Special Civil Application No.2487 of 1979. His orders were also challenged before the Higher Authority and the said orders were confirmed by the Higher Authority. Therefore, it can not be said that he has committed misconduct while in service.

4. Learned advocate Mr.KS Zaveri has also relied the case of Union of India v/s. J.Ahmed reported in AIR 1979 S.C. 1022. It is observed in the aforesaid judgment that, "...The inhibitions in the Conduct Rules clearly provide that an act or omission contrary thereto so as to run counter to the expected code of conduct would certainly constitute misconduct. Some other act or omission may as well constitute misconduct. Lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would not themselves constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge

of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high."

5. The Division Bench of this Court ( Coram : D.M.Dharmadhikari, CJ & R.R.Tripathi, J) in L.P.A. No. 765/01 i.e. the case of Satya Pal Gusain v/S State of Gujarat decided on 25.9.01 has held in para 6 as under :

" Having gone through the judgment of the learned Single Judge, we find that the learned Single Judge ought not to have upheld the justification rendered by the respondents explaining the delay in serving charge sheet to the appellant on the ground that the file was missing. From the facts of the case it is clear that the charge sheet was served after lapse of about 16 years, on the day of retirement of the petitioner i.e. 30.6.2000, that too after he handed over the charge, after Office Hours on 30.6.2000. This goes to show that a charge which was stale, the authorities for lack of bona fide served the charge sheet. The action on the part of the authorities comes under cloud, more particularly because on the day of retirement, after office hours the appellant was served with the charge sheet."

In the case before me, the appellant was served with the charge sheet on 11.8.87 (Annexure `D') after retirement on 31.3.85, the order of which the black cloud was roaming over. The petitioner's order was challenged in the Higher Forum and the same was confirmed by the Higher Authority. Inspite of the aforesaid fact, the respondents thought it fit to give the charge sheet and subsequent order of inquiry. In view of the order of the Division Bench of this Court as discussed above, the present S.C.A. deserves to be allowed and the order passed by the respondents for giving charge sheet on 11.8.87 produced at Annexure `D' and subsequent inquiry dated 12.4.88 produced at Annexure `F' deserves to be quashed and set aside.

The petition is allowed. Interim relief granted earlier is hereby confirmed. Rule is made absolute.

( SHARAD D DAVE, J )

srilatha